

SUMF EXHIBIT 1
EXCERPT OF DR. LUIGI WARREN'S
NOVEMBER 16, 2018
DEPOSITION TRANSCRIPT

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - -

4
5 LUIGI WARREN, : Civ. A. No.
6 Plaintiff, : 17-12472-DLC
7 :
8 vs. :
9 :
10 THE CHILDREN'S HOSPITAL :
11 CORPORATION, :
12 Defendant. :
13

14 - - -

15 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

16 Friday, November 16, 2018

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18 Videotaped deposition of LUIGI WARREN, Ph.D.,
19 held at VEDDER PRICE, P.C., 1925 Century Park East,
20 Suite 1900, Los Angeles, California, commencing at
21 approximately 9:14 a.m., before Rosemary Locklear, a
22 Registered Professional Reporter, Certified Realtime
23 Reporter and California CSR (#13969).
24

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1 Q. Were you in any other labs at Caltech?

2 A. No.

3 Q. Was Dr. Quake the principal in those labs, or
4 was it Dr. Sternberg, Dr. Fraser, and Dr. Rothenberg?

5 A. Those were rotation assignments during my first
6 year or maybe year and a half. So the -- the principal
7 investigators in those labs were the names you've just
8 mentioned.

9 Q. And then at some point you switched to the Quake
10 lab at Stanford; right?

11 A. Yes. I joined the lab just as he, Steve Quake,
12 moved to Stanford.

13 Q. And that was in 2004?

14 A. I believe so, yes.

15 Q. And you were there until approximately 2007,
16 when you received your degree?

17 A. I was there until 2007. I finished up I guess
18 October, I guess, and the degrees are only awarded once
19 per year, so the degree wasn't actually awarded until
20 2008.

21 Q. Following your time at the Quake lab, you joined
22 Derrick Rossi's lab; correct?

23 A. That's right.

24 Q. And at that time that lab was at the Immune
25 Disease Institute.

1 A. Yes.

2 Q. In Boston.

3 A. Yes.

4 Q. And we're going to, obviously, talk at greater
5 length about your time with Dr. Rossi. I'm just trying
6 to establish my chronology here.

7 A. Uh-huh.

8 Q. You were there from approximately 2007 to 2010;
9 correct?

10 A. Yes.

11 Q. Following your departure from Dr. Rossi's lab,
12 you joined the Yanik lab at MIT?

13 A. That's correct.

14 Q. You were then working as a post-doctoral
15 researcher?

16 A. Yes.

17 Q. And that was true at the Rossi lab as well?

18 A. Yes.

19 Q. From 2010 to 2012, you were a self-employed
20 consultant?

21 A. Yes.

22 Q. What sort of consulting were you doing at that
23 period?

24 A. Biology, work related to reprogramming and other
25 closely related topics.

1 of cell, and regressing it artificially to express or to
2 have the phenotype or the properties of an embryonic
3 cell, a cell such as you would find in an extremely
4 early embryo where it's just a ball of cells that
5 haven't decided what they're going to become.

6 So those cells have the potential to be directed
7 to become any other kind of cell. So the reprogramming
8 process is a method of artificially redirecting a
9 specialized cell to become an unspecialized cell, and
10 once it becomes an unspecialized cell, then potentially
11 you can make any other kind of cell.

12 And this is a process that was originally
13 presented around 2006, 2007 in the literature by Shinya
14 Yamanaka, a Japanese scientist, who subsequently got the
15 Nobel Prize for this work.

16 And he, Yamanaka, originally, effected that
17 process by using integrating viruses to carry genes
18 associated with the embryonic state to -- into cells so
19 that they integrated into the DNA of the cells and
20 expressed these embryonic genes, and after a period of a
21 few weeks of expression, this forced the whole gene
22 expression network to -- to remodel to this embryonic
23 state or regress to this embryonic state.

24 So, obviously, as reflected by the award of the
25 Nobel Prize, this is a -- people saw this as a huge --

1 hugely useful breakthrough.

2 A major potential problem with the
3 breakthrough -- well, with applying it clinically to
4 produce cells for, for example, for transplant, is that
5 it involves modifying the genome and putting genes that
6 are -- potentially could cause cancer into the -- into
7 the genome. And those genes could spontaneously be
8 reactivated or even if -- even just the fact that you
9 have disrupted the DNA, the native sequence of the DNA,
10 could cause dysregulation of genes and could cause
11 cancer.

12 So although the technology that Yamanaka
13 originally presented had tremendous promise and it had
14 immediate application in producing cells for -- of
15 different types for research -- for example, you could
16 produce human neurons, which are normally quite
17 difficult to get, you could take skin cells, convert
18 them to these so-called pluripotent stem cells and then
19 convert those to neurons and study the neurons in a
20 dish.

21 So for that purpose, this problem of the
22 integration of the -- the genes was perhaps not that big
23 of an issue, but if you wanted to produce cells for
24 medical application, then it would be a huge issue,
25 because anything you put back into the patient, say, you

1 made a skin graft to treat a burn patient, for example,
2 those cells, the genes might be reactivated and cause
3 cancer.

4 So it was in the early days of -- after
5 Yamanaka's publication, the entire field recognized that
6 we needed to find ways of getting rid of those viruses
7 and reprogramming the cells in some way that didn't
8 modify the genome and didn't entail this risk of -- for
9 this particular risk of oncogenesis, of being
10 potentially cancer-forming.

11 And the approach that I took while I was in the
12 Rossi lab, which was somewhat, I think, for -- out of
13 left field for most people in the -- in the -- in this
14 area, was to express the gene, the reprogramming genes,
15 from synthetic messenger RNA transcripts.

16 So genes -- most of the -- most of the genes
17 that the cell expresses are ultimately converted to --
18 to protein or express protein. There are some that have
19 their effect as RNA, but, mostly, most genes are
20 associated with protein.

21 And DNA, which is -- is kind of the long-term
22 storage of the genetic information of the cell, is
23 transiently converted into short-lived messenger RNA
24 transcripts, which, in turn, are translated to become
25 protein.

1 us at that point, and Derrick went to Philadelphia for
2 the ICCR conference. So this was still fairly soon
3 after Yamanaka's big breakthrough, which everybody was
4 talking about at that conference.

5 It was the, you know, talk of the town, as it
6 were, and there were big, you know, speeches about it,
7 including these prominent individuals, like Yamanaka
8 himself and other -- other top stem cell researchers,
9 talking about reprogramming. And in some of these
10 speeches the -- the theme was brought out, you know,
11 number-one -- number-one thing we need to do is get rid
12 of the viruses that are currently required for
13 reprogramming.

14 And, you know, that suddenly -- I don't know if
15 I had connected this mRNA idea to the Yamanaka stuff
16 before that. Probably not. I don't think I was
17 particularly aware of it, neither was -- you know, we
18 were a hematopoiesis lab, not a pluripotent stem cell
19 lab. So we were stem cell, but not pluripotent stem
20 cell.

21 But, you know, suddenly that kind of really
22 connected with this idea that had been in my head and
23 I -- I remember listening to a talk, big talk, like a
24 keynote, maybe it's Yamanaka himself, maybe it was
25 George Daley, but they were running down these ideas for

1 how we would get rid of the viruses. And it was the
2 usual suspects, you know, cell -- cell-penetrating
3 proteins and small molecules. And I remember having the
4 reaction, I can think of a much better way of doing it.

5 Also, one of my -- one of the other post-docs in
6 the lab, Isabel Beerman, had a friend who was also
7 attending the conference. His name is Han Lee. He was
8 out of -- I think he'd been a grad student, maybe, with
9 Isabel at Yale, I think. And he actually had done
10 something with synthetic mRNA, which I hadn't. I worked
11 with synthetic RNA, but that's not the same thing as
12 synthetic mRNA.

13 So I picked his brains and bounced the idea off
14 him and, you know, he was kind of like, it's not a bad
15 idea. So -- so I came back from that conference, which
16 was sometime I think in middle or late June, and I wrote
17 up my notes from the conference in my notebook, and I
18 think a few days later also wrote my idea for using
19 synthetic mRNA to -- to make iPS.

20 And I actually -- I didn't initially seek
21 Derrick's approval for this idea, but I ordered some
22 cheap reagents, some primers, to make -- to start making
23 some constructs related to this project.

24 And -- and then I think it wasn't until -- I
25 think it was a few weeks later that I started to feel

1 filed the first --

2 Q. Provisional application.

3 A. -- provisional application. And about a year
4 before that Derrick had -- so that would be 2009 --

5 Q. Okay.

6 A. -- not 2008. 2009, had said we're close, we're
7 starting to talk to people, we need to start thinking
8 about protecting this.

9 MR. FOLKMAN: And let me ask the reporter to
10 mark this as Exhibit 3.

11 (Exhibit Warren-3 was marked for
12 identification.)

13 THE WITNESS: And, of course, even -- so Derrick
14 had already spoken to Ryan in August of 2008, resulting
15 in the -- he had notified him of the invention or
16 whatever. I forget what the exact term they used is.

17 MR. FOLKMAN: Sure.

18 THE WITNESS: Sorry.

19 BY MR. FOLKMAN:

20 Q. So, Dr. Warren, do you now have Exhibit 3 in
21 front of you?

22 A. Yes.

23 Q. And do you see -- well, is this the Report of
24 Invention that you were referring to?

25 A. I don't think so, but let me look more closely.

1 Q. Okay.

2 A. (Witness reviews document.) I think this is
3 much later. This is some other document much later.

4 Q. Yes. I see that this one is dated in May of
5 2010, if you look on Page 2.

6 A. Yes. So this may be an Report of Invention, but
7 I know from emails from Ryan and from some notes that
8 have been turned over to me from Ryan that he logged a
9 conversation with Derrick that was in August 2008. So
10 the month after I disclosed to Derrick that -- the idea
11 for the project and got his permission.

12 So that's -- so these are different things.

13 Q. Are you aware of an invention disclosure form
14 other than this one?

15 A. No.

16 Q. When did you leave IDI?

17 A. June of 2010.

18 Q. By that time, the research on the project had
19 been completed?

20 A. My part of it had been. I mean, we'd written
21 the paper, we'd submitted the paper, and we'd filed the
22 IP.

23 Q. Do you remember approximately when you submitted
24 the paper for publication?

25 A. Again, I was reviewing that. And let me -- I

1 this proves that in vivo these cells were pluripotent,
2 they could give rise to these appropriately diverse
3 lineages.

4 So those things were just kind of -- I mean, we
5 just had to wait for those and, hopefully, have them in
6 our back pocket if the reviewers came back, as they
7 quite possibly might, and say, oh, we want to see better
8 validation that you've really got what you say you got.

9 Q. Why did you leave IDI?

10 A. The proximate grievance that I had was with the
11 submission to Cell as opposed to just Cell Stem Cell.
12 So I had a bitter disagreement with Rossi about doing
13 that. And, you know, I knew it was his authority to do
14 that, but I felt that I had standing.

15 And the more collegial thing would have been to,
16 you know, work -- pay heed to my -- my desires on that
17 front. But these kind of conflicts often happen between
18 somebody who owns a project and then his boss has, in a
19 sense, hedged because he's got multiple projects. So
20 there's a conflict of interest, but -- or difference in
21 how we weigh things.

22 So I had accepted, or didn't resign when he did
23 that, but I was, shall we say, disgruntled. And I
24 thought that it was a potentially suicidal strategy and
25 either that I would bear the brunt of that since my

1 whole career, basically, at this point was this was the
2 big thing that I had done and I would have not hedged.

3 But, you know, I went about my business and
4 supported these other projects while we waited to see.
5 And, you know, Derrick was -- in fact, I remember
6 Derrick's words were, I feel lucky about the Cell
7 submission. And I didn't feel lucky about the Cell
8 submission.

9 And as it turned out, we came -- it came back
10 with three reviews, one of which was quite nasty and
11 demanded us to do all kinds of things that would take a
12 long time and didn't really seem that justified, and the
13 other two were -- Derrick said they were quite good
14 reviews. I wouldn't -- I was looking at them in the
15 last few days. I wouldn't say they were that -- that
16 good.

17 So we resubmitted, so I think -- I think we --
18 we got the initial rejection back fairly quickly,
19 actually, within about four weeks, but with these pretty
20 nasty reviews, or at least one of them was very nasty,
21 and -- and we resubmitted.

22 In fact, we were then out at Cell. So, in a
23 way, that was good. Because to get published in Cell,
24 typically, can take a year, or a year and a half, even,
25 and they can make you jump through all kinds of hoops.

1 And, you know, I'm not saying that they shouldn't, but
2 that's -- that's how it is.

3 And then we resubmitted to Cell Stem Cell and so
4 there was a burst of optimism. And then a few weeks
5 after that, we got the rejection back from Cell Stem
6 Cell and it was evident from the rejection that we still
7 had that same reviewer that we got lumbered with from
8 the Cell submission.

9 And he was asking us to do, you know -- I think
10 he was -- I think one of the things he asked was, you
11 know, to get this working in -- in mouse, because in
12 mouse you could do more rigorous proofs of pluripotency,
13 where I've never actually worked significantly with
14 murine-induced pluripotent stem cells, but there are
15 things you can do in the mouse system, which are just
16 not possible. And like you can kind of take it,
17 demonstrate that the cells contribute over generations,
18 and things like that.

19 So that would have taken a long time. In fact,
20 we now know that this technique didn't really adapt very
21 well to murine reprogramming. I'm not even completely
22 convinced that -- I know that there has been publication
23 claiming it, relatively obscure, but that would have
24 been a Vietnam-type scenario if we'd gone down that
25 route.

1 So Derrick was like -- Derrick was appropriately
2 outraged, but said, oh, we got George Daley on our side
3 and he's very influential, and we're really -- you know,
4 push the editor to kind of override this reviewer.

5 But, in any case, when I saw that, I felt like
6 outraged, and that's when I quit.

7 Q. And so that I, as an outsider, can understand,
8 what you're telling me, as I understand it, is that you
9 felt that for your career, given that this was your main
10 project, it would have been more advantageous for you to
11 submit the article for publication in Cell Stem Cell
12 first, rather than submitting it to Cell first.

13 A. Yes. So Cell Stem Cell had a reputation at that
14 time, and I don't know if this is still true, they were
15 a fairly new journal, offshoot of Cell, on the block,
16 and I believe -- I think the -- I think it was -- I
17 forget whether it was 2007, 2008, they had published the
18 protein -- protein-based reprogramming, cell-penetrating
19 protein, which one -- I think two labs came up with it
20 about the same time, Sheng Ding was one of them.

21 And that work even -- I think they -- they
22 turned it around in a couple of weeks, which is pretty
23 extraordinary for a -- I'm not sure if that was to
24 publication, but my recollection is that they -- that
25 they had accepted within a couple weeks. So they were,

1 person, et cetera.

2 A. Yeah.

3 Q. So let's leave that to the side for a minute.

4 A. Okay.

5 Q. Is there anybody else that you're working with
6 in connection with this lawsuit, aside from that lawyer?

7 A. On a long-term basis, no.

8 Q. On any basis.

9 A. I mean, there are people that I've consulted
10 with, like accountants and tax law specialists, you
11 know, these various services that you can just speak to
12 a lawyer on a specific point, that kind of thing.

13 Q. Okay. And your discussions with accountants,
14 that relates to the issues about equity that the case
15 raises?

16 A. Yes.

17 Q. And can you tell me what accountants you've
18 spoken with?

19 A. I don't believe I -- I'm not going to answer
20 that.

21 Q. Okay. So let me just -- I obviously can't make
22 you answer anything you don't want to answer.

23 A. Sure.

24 Q. Is it fair to say that you believe that the name
25 of the accountants that you've spoken with is

1 privileged?

2 A. I believe that this would be, since I'm
3 representing myself, attorney work product.

4 Q. Okay. Will you agree with me that any issues
5 that come up in the deposition like this where you've
6 sort of raised a point of privilege, that rather than
7 sort of stopping the deposition and filing motions and
8 so forth, we can wait until the end, I can finish the
9 deposition and then if there are any issues, I can raise
10 them later?

11 Does that seem fair to you?

12 In other words, what I don't want to do is to
13 say, well, we've got to stop, we've got to go see the
14 judge. I'd like --

15 A. You mean you want to go back to these questions
16 at the end and we'll see where we stand.

17 Q. Sure. Sure.

18 A. If that's what you're saying, yes, that's okay.

19 Q. Okay. So other than accountants and the tax law
20 specialist that you say you spoke with, was there
21 anybody else that you've spoken with in any kind of
22 consulting or advisory professional capacity about the
23 lawsuit?

24 A. Again, I think I'm not going to answer. We went
25 through this in the written discovery phase and --

1 Q. Now, how do you know that it was approved by the
2 IDI board of trustees?

3 In other words, is that something that you have
4 any knowledge about?

5 A. You mean apart from the fact that it says that
6 it was?

7 Q. Correct.

8 A. No.

9 Q. Okay. How did you become aware of the existence
10 of this policy?

11 A. Yes. In spring of 2011, I was contacted by Ryan
12 Dietz, who asked me to provide follow-up assignments or
13 additional assignments for, I think it was at least -- I
14 think it was two new patent filings that were based on
15 the original patent filing of, I think, April 2010, but
16 included -- I believe the difference was that they
17 included some of the additional data that we'd gotten
18 from our collaborators.

19 And I said I would like to -- in responding, I
20 said I would like to know, you know, exactly what your
21 obligations to me are before I continue with this
22 process, because I had been told by Derrick Rossi that
23 the inventors were to share one-thirds of the licensing
24 proceeds, but I didn't seem to have any piece of paper
25 in my possession that, you know, put this down in

1 writing.

2 And I told, in a series of emails, told Ryan
3 that I wanted to get this clarified, what I was being
4 promised, before I continued, having left the employ of
5 the IDI, to, you know, continue to work with them on the
6 prosecution of the patent, and also expressed a desire
7 to know -- I had read -- the first I had heard of the
8 Moderna deal was that it was mentioned in a footnote in
9 the Cell Stem Cell publication. So I had not heard that
10 that deal had been done prior to that.

11 So I was aware of that. And I had been in on
12 some of the early conversations with Ryan Dietz and
13 Derrick about commercializing the IP. In fact, I think
14 I may have been the one who suggested the idea of
15 setting up this corporation, and then I'd been kind of
16 left out progressively of the later discussions that
17 they had.

18 So -- but I do remember, you know, the issue
19 of -- in fact, again, I think I might have been the one
20 who suggested that you could do an equity deal for the
21 license. And so I was curious because Derrick had said,
22 as inventors we'll share one-third of the licensing
23 revenue, what does that mean if it's an equity deal? Or
24 what does it mean if it's not licensing, but they just
25 sell it outright? So I wanted to know the details of

1 or what?

2 And I -- I think it was after this interaction
3 that I got an email from I think it's Mr. Resnick, who
4 was the external counsel for IDI, an email again said
5 I'm bound by these policies, the IDI policies, and
6 demanded my cooperation, and included a draft lawsuit
7 for breach of contract and seeking injunctive and
8 declaratory relief from -- I think it was from the -- it
9 was written from the Superior -- I think you would call
10 it Superior Court, State Court, not the Federal Court.

11 So I -- and so that kind of spelled out a case
12 and made a number of assertions about the IDI policies,
13 including that they were posted on the company intranet
14 and that all IDI employees at their induction or their
15 orientation receive a copy of these policies and are
16 required to sign a Participation Agreement, which is
17 included as an annex to the -- to this document.

18 I don't know if you've got it here, the
19 Participation Agreement. Yeah, Participation Agreement.
20 And that I would -- I would be in breach of contract if
21 I didn't sign these assignments.

22 And so, finally, I had in my hands a paper copy
23 of the -- of this exact document. I had an email saying
24 that I'd get half of one-third of licensing proceeds,
25 and that that is promised to me in -- in return for --

1 for fulfilling my duties under this Agreement, which
2 include helping with the prosecution of the patent.

3 And I discussed it with my attorney I had in
4 Boston and went over the legal points and, I mean, A,
5 the end -- the take-away from that was, yeah, they
6 probably have a pretty good case here. And, also, I had
7 got what I -- I had finally gotten what I had sought,
8 which was to have in writing what I was going to be paid
9 from this -- from the Moderna agreement, and -- and full
10 context of that, not just this number hanging in the
11 air, this 33 and a third to inventors.

12 So I wrote back and said, I'm satisfied the law
13 is in your favor and I'm sending you the -- I agree to
14 execute the -- these two follow-on Assignments.

15 Q. Had you executed an Assignment before that?

16 A. Yes. In, I think, maybe July of 2010, I guess
17 it must have been, because it couldn't have been 2009
18 because the -- it didn't exist at that time.

19 Q. And in July --

20 A. I'm a little -- yeah, I believe it was July
21 of -- of -- I know I've turned those documents over to
22 you, so you can see the date on it.

23 Q. Sure.

24 That was -- just so that I'm clear, that was
25 shortly after your departure from --

1 Q. Uh-huh.

2 And just so that I'm clear on the chronology,
3 you don't -- you don't recall today the circumstances of
4 how it is that you came to sign that first assignment,
5 but it was sometime shortly after your departure from
6 IDI.

7 A. Was it after or before? I'm not sure. I seem
8 to remember it being July, the date on it being --

9 Q. July?

10 A. Maybe -- maybe what happened was that it was on
11 my desk and I took it with me at the time that I quit
12 and then --

13 Q. Sent it in.

14 A. -- then sent it in. Maybe that's what happened.

15 Q. Okay. Now, is it true that the spring of 2011
16 was the first time that you had ever seen any portion of
17 the IDI policy?

18 A. I don't know if that's true.

19 Q. When do you think the first time is that you saw
20 any portion of the IDI policy, Exhibit --

21 A. This is --

22 Q. Excuse me.

23 A. I don't know if I ever saw this. According to
24 the draft lawsuit, this was on the IDI intranet. So
25 maybe I looked at it there in the two or three years

1 that I was at IDI. But I have no recollection of that.

2 Q. Okay.

3 A. So the first time that I recall seeing this was
4 when -- when Dianne McCarthy sent me a copy.

5 Q. And you don't recall seeing it during your IDI
6 onboarding process.

7 A. As I said, I don't really recall the onboarding
8 process, so no.

9 Q. Right.

10 So -- and it's the kind of thing that you can't
11 say one way or the other?

12 A. Yeah. I certainly can't say whether I ever saw
13 it while I was at IDI.

14 Q. Okay. Did anybody have to make any legal
15 threats or demands in order to get you to sign that
16 first Assignment?

17 A. No.

18 Q. When was it that Dr. Rossi told you that the
19 inventors' share was one-third?

20 A. That I don't know. I've tried to recollect it
21 with more specificity, but I can't.

22 Q. Can you recall whether it was before or after
23 you left IDI?

24 A. Oh, I think it was quite early on.

25 Q. Do you recall anything about the -- that

1 conversation? In other words, did he say anything more
2 detailed than the inventors get a third?

3 A. Not that I recall.

4 I do know that the thing about the inventors
5 getting a third was something that I took as read from
6 quite early on, but I took it on the basis of Derrick
7 told me this, and this is Harvard, they must mean what
8 they say.

9 Q. Do you know, by the way -- well, when you say
10 "this is Harvard," just so that everybody is clear, you
11 mean that IDI was a Harvard-affiliated institution.

12 A. Yeah. And it was on the Harvard Medical School
13 campus and I had a Harvard email, so...

14 Q. Do you recall whether Derrick told you that the
15 inventors got a third before or after the Affiliation
16 Agreement between IDI and Children's Hospital?

17 A. I cannot be sure of that either way.

18 Q. Okay.

19 A. I don't -- it wasn't late, but it wasn't -- but
20 I -- I -- I can't pinpoint it --

21 Q. Okay.

22 A. -- beyond that.

23 MR. FOLKMAN: I'm going to ask the reporter to
24 mark two more documents.

25 Why don't we mark the emails first as Number 5

1 know that for a fact.

2 Q. Leaving aside any side deals, so to speak, that
3 Dr. Rossi may have had with Moderna, founders' shares or
4 whatever, do you believe fundamentally that a 50/50
5 split between you and Dr. Rossi in terms of the
6 inventors' share is fair?

7 A. I think it's -- yes. I don't -- I don't really
8 know. I -- my impression is that agreeing to either
9 split is -- I don't know how common that is.

10 So, in a certain sense, yes, morally, I feel
11 that the invention is primarily mine, although I
12 certainly don't deny that he had a role in it. But I've
13 never tried to push that point or suggest that we should
14 have other than a 50/50 split.

15 Q. In your experience working in labs where there's
16 a principal investigator and then post-docs, is it
17 fairly typical for principal investigators, who may not
18 be doing the lion's share of the actual work, to receive
19 equal shares with the other inventors?

20 A. I would expect that's the case. I don't have
21 real no -- really no concrete insight, but just common
22 sense would suggest that rank has its privileges.

23 Q. Remind me, is this -- is this invention -- I
24 think you said it was one of two in biology that you had
25 been involved with that had gotten to the stage of

1 So part of this purpose of this is to -- it's a
2 promise that you'll get something in return for not
3 doing that. So that seems broadly to fulfill, you know,
4 the basic character of a contract.

5 And also IDI and -- and Dianne McCarthy and
6 IDI's lawyer and Ryan Dietz all represented to me that I
7 had obligations. This was not as a result of the -- or
8 arising from this document. And seems that there's --
9 seems reasonable that if -- if I have obligations
10 arising from what's in this document, then the other
11 side does.

12 Q. Do you understand, having worked in other
13 research institutions, that the standard practice is to
14 require as a condition of employment that scientists who
15 are doing inventive work agree to assign their
16 inventions to the institution?

17 A. I'm sure that is a standard practice, yes.

18 Q. Was that the practice at Caltech?

19 A. I mean, I would assume it is. I would assume
20 that any institution like that would -- would make that
21 a requirement.

22 Q. And do you believe it was a requirement of your
23 employment at Caltech?

24 A. I have no specific knowledge of that, but I -- I
25 would be very surprised if that wasn't the case.

1 Q. How about MIT; do you believe that?

2 A. Well, any of these institutions.

3 Q. Well, how about IDI?

4 A. Yes.

5 Q. So you had a -- you had an understanding that as
6 a condition of being employed by IDI, you were required
7 to assign your inventions; right?

8 A. I wouldn't say that I had an understanding, but
9 I'm not surprised that the -- they have a policy which
10 says that, and have asserted that that -- that policy
11 creates an obligation on me and that I -- that's the
12 extent of it, yes.

13 Q. And Children's Hospital -- you never became a
14 Children's Hospital employee; right?

15 A. No.

16 Q. But you understand that -- or do you understand
17 that Children's Hospital also has a policy of requiring
18 its scientists to assign their intellectual -- their
19 inventions to the hospital?

20 A. Yes. Because I've read those policies, yes,
21 both the 1992 policy and the new one, which I think was
22 promulgated in 2015, I think.

23 Q. Are you aware of any research university that
24 does not require its scientists who are doing inventive
25 work to assign their inventions to the institution?

1 A. No.

2 Q. Are you -- are you aware or do you -- do you
3 recall whether you signed a -- something -- let me start
4 again.

5 Are you aware whether you signed a Participation
6 Agreement when you worked at Caltech?

7 A. I don't have any recollection of that. But -- I
8 should say, I don't know. Because that's a long time
9 ago.

10 Q. Do you have any recollection of signing such an
11 agreement at MIT?

12 A. I don't -- I don't recall what I signed at MIT.

13 Q. Do you know whether others in the Rossi lab
14 signed Participation Agreements?

15 A. The only thing I know is that in -- that I had a
16 Request for Production of both my signed Participation
17 Agreement and Rossi's signed Participation Agreement,
18 and that in your responses you've told me that the --
19 you're unable to find these documents. Whether that
20 means they don't exist or never existed, I have no way
21 of knowing.

22 Q. Well, do you believe that you signed a
23 Participation Agreement?

24 A. I have no belief about it. I just don't know.

25 Q. Do you --

1 but it -- I would tend to assume that, yeah. Because
2 it's not based on any concrete knowledge, just I would
3 assume that they would want to make sure that any
4 inventions -- that they had at least some ability to --
5 to profit from those inventions.

6 Whether that -- whether that necessarily implies
7 this assignment, I -- I don't know, but that's an
8 obvious -- that's the most natural way to do it.

9 Q. Do you know whether assignments are required
10 from inventors in cases where all or any part of the
11 funding for the research is provided by the Federal
12 Government?

13 A. I don't.

14 Q. Was the Rossi lab doing work that was funded by
15 the Federal Government?

16 A. Not that I was aware of.

17 Q. Do you know whether any of the projects, other
18 than this cellular reprogramming project that you've
19 been describing that you did work on in the early parts
20 of your tenure at the Rossi lab, were federally funded?

21 A. Not that I know of.

22 Q. What was the role of the techs in the Rossi lab?

23 A. Well, I think -- I think in the case of
24 Ms. Zguro, I seem to remember she was mainly an animal
25 tech or at least she had experience with that. And,

1 Q. Okay.

2 A. All annual license fees --

3 Q. You can -- yes, unless you want to read the rest
4 out loud.

5 A. No, that's okay.

6 Q. Okay. You see the use of the term "license
7 fees" in that paragraph; right?

8 A. Yes.

9 Q. So you see that Paragraph 8 -- well, will you
10 agree with me that Paragraph 8, although the numbers are
11 redacted, that those are -- those are amounts of money
12 and not equity?

13 You see that?

14 A. Yes.

15 Q. License --

16 A. Yes.

17 Q. So why is it that you think that Paragraph 3, on
18 Page 10 of Exhibit 4, applies to the equity that the
19 hospital received as part of the Moderna transaction?

20 Or, put another way, why do you believe that the
21 equity that the hospital received is equity received in
22 lieu of a licensing fee?

23 A. I'm not sure I understand the question.

24 Q. Well, you see that Paragraph 3, on Page 10, says
25 that equity received by IDI in lieu of a Licensing Fee

1 looked at.

2 A. Yeah.

3 Q. So, with that in mind, I mean, is there any
4 reason that you have to think that that equity is a
5 license fee, other than what you've already said?

6 A. Well, let's see if they define the term
7 "licensing fee" in this document.

8 (Witness reviews document.) I don't see, so far
9 anyway, a specific definition of that, but I think that
10 would be kind of a commonsense interpretation of that
11 language.

12 Q. Okay.

13 A. In the context of this document.

14 Q. All right. Is there any provision, other than
15 the provision on Page 10 of the IDI policy regarding
16 distribution of equity, that you rely on when you say
17 that the hospital was required to distribute the equity
18 to you soon after the time that it received it from
19 Moderna?

20 A. I couldn't really answer that question without,
21 you know, going over the text with a fine-toothed comb.

22 Q. Okay. Well, I mean, one thing we could do is,
23 we could go off the record and you could take as much
24 time as you need and then answer that question.

25 Is that fair?

1 A. Sure.

2 Q. Okay.

3 MR. FOLKMAN: So why don't we go off the record.

4 VIDEO OPERATOR: We are now going off the video
5 record, and the time is approximately 11:35 a.m.

6 (Recess, 11:35-11:52 a.m.)

7 VIDEO OPERATOR: We are now going back on the
8 video record, and the time is approximately 11:52 a.m.

9 BY MR. FOLKMAN:

10 Q. So, Dr. Warren, when we left off, the question
11 on the table was whether there was any provision in the
12 IDI policy, other than -- which is Exhibit 4, other than
13 the provision that we had been talking about on Page 10,
14 that you would rely on to support the argument that the
15 hospital was required to deliver shares of stock to you
16 sometime shortly after it received them from Moderna.

17 And we took a pause so that you could just take
18 a look through. So that's the question.

19 A. Yeah. So let me see if I can kind of restate or
20 rephrase what you said. It seems to me that what you're
21 really asking is, is there anything that wouldn't allow
22 us to put an interpretation on this Distribution of
23 Equity paragraph where we could say that the language of
24 agreement could be equivocating between equity and
25 liquidated equity.

1 And I don't see anything in the rest of the
2 Agreement that argues against that, except in a negative
3 sense that the rest of the Agreement does repeatedly
4 refer to equity in the kind of restrictive sense.

5 Q. Okay. Okay. Do you see on Page 4 of Exhibit 4
6 the very last sentence?

7 A. Yes.

8 Q. Could you read that one out loud, please.

9 A. The Trustees retain the discretion to amend this
10 Policy from time to time to fulfill these purposes.

11 Q. Now, you said before that you didn't know, other
12 than the fact that the document itself said so, that
13 Exhibit 4 itself had been adopted by the IDI Board of
14 Trustees; correct?

15 A. Sorry. Say that again.

16 Q. You told us earlier that, aside from the fact
17 that Exhibit 4 itself says approved by the IDI Board of
18 Trustees, you didn't have any knowledge about whether
19 the IDI Board of Trustees actually did anything to
20 approve Exhibit 4; right?

21 In other words, you don't know of any meetings
22 where that happened or any discussions among the board
23 approving this policy.

24 A. No. I know about it because this was what was
25 represented to me as the controlling policy by Ryan

1 (The court reporter read the requested portion
2 of the record.)

3 THE WITNESS: Yes. The only thing I would add
4 to that is it's never been -- the question of whether
5 the policies have ever been changed has obviously come
6 up in the context of this suit, and the only thing
7 that's ever been asserted regarding that has been this
8 claim that the policies were changed through the
9 language in the Affiliation Agreement.

10 So I guess, by implication, that suggests that a
11 2004 document was -- was -- was it. Plus, that was the
12 document they sent me. So, in that sense, I do have
13 reason to believe that it wasn't changed.

14 MR. FOLKMAN: Okay. So I move to strike the
15 answer, but I'll go on.

16 BY MR. FOLKMAN:

17 Q. Who were the trustees at the time that you were
18 at IDI?

19 A. I have no idea.

20 Q. Do we agree that neither IDI nor Children's
21 Hospital ever made distributions to you or to Derrick
22 Rossi under the IDI policy, Exhibit 4?

23 A. Yes.

24 Q. I'd like to talk about the damages and remedies
25 that you're claiming in this lawsuit.

1 A. Uh-huh.

2 Q. One element of what you're claiming, as I
3 understand it, is that the percentage of the licensing
4 revenue, the net licensing revenue, that you were
5 entitled to under the IDI policy is higher than the
6 percentage that you were entitled to under the policies
7 that the hospital has actually applied and you're
8 entitled to the difference between those two
9 percentages.

10 Are you with me?

11 A. That's a somewhat strange way of putting it,
12 since it's not a damages case, but I'm asking the judge
13 to rule that the IDI percentage is controlling.

14 Q. That's a very fair point.

15 I mean, you're not claiming damages, you're
16 claiming -- you're seeking a declaratory judgment. But
17 that's the essence of your point about the percentages;
18 right?

19 A. Yes.

20 Q. Okay. And thank you for correcting me about the
21 technicality there. You're absolutely right.

22 The other main claim that you're making is
23 that -- as I understand it, is that the hospital and IDI
24 should have distributed -- well, that you should have
25 received stock at or shortly after the time that IDI

1 additional advice.

2 Q. If you had received stock -- I want to try to
3 understand why you think you would have been better off
4 receiving the stock --

5 A. Uh-huh.

6 Q. -- than receiving the proceeds.

7 Do you have an understanding about whether you
8 will have a right to elect to treat cash that you
9 receive upon the sale of the stock as capital gains for
10 tax purposes?

11 A. I have -- I have asked about that, you know,
12 asked financial experts, accountants, tax lawyers, and I
13 did raise that possibility. And I don't have a definite
14 answer, but, generally, it seemed probably not.

15 Q. You've received advice that says probably not?

16 A. Yes.

17 Q. Okay. If you had received the stock at the time
18 that IDI received the stock, what would you have done
19 with it?

20 A. Nothing.

21 Q. You would have held it?

22 A. That's not liquid -- it's not a liquid asset.
23 It's a private corporation. In any case, there would,
24 I'm sure, been restrictions, which I would have
25 inherited on any sale of the stock. So it would just

1 have been a long-term capital asset.

2 Q. And do you agree with me, then, that the
3 stock -- if you had received a stock certificate, it
4 probably wouldn't have been saleable?

5 A. I think that's likely, yes.

6 Q. And so, as I understand it, the basis of your
7 claim that you would have been better off receiving the
8 stock earlier rather than receiving the cash later is
9 that you believe that you would not be entitled to
10 capital gains treatment on cash that you received later,
11 but you would have been entitled to capital gains
12 treatment if you had received the stock earlier.

13 Is that a fair statement of your view?

14 A. In terms of that direct economic injury
15 resulting from not receiving the stock early, that's
16 correct, yes.

17 Q. And is there any other reason that you think you
18 would have been better off receiving the stock earlier
19 rather than receiving the cash later?

20 A. I do think that receiving the stock earlier
21 would have made it harder for the -- for the hospital
22 to, as it were, change the rules on me.

23 In fact, they certainly -- if I had received the
24 stock back in 2011, I certainly would have received it
25 based on the 33-and-a-third rule, because even -- even

1 which has a different set of terms and percentages, I
2 guess because they were perhaps in the negotiations with
3 Rossi, that did have a significant lab percentage. So
4 they were partly modeling it in the negotiations with
5 this 2015, although nobody claimed that the 2015 policy
6 applied.

7 So I had several exchanges with him where I
8 tried to get the facts of the three different policies
9 we're talking about. What's the basis for which policy
10 applies? Well, there are four, if you include the
11 custom policy.

12 And -- and once I got those all lined up, all
13 those facts lined up, I said, I'm not willing to sign
14 this custom agreement because it means that I'm
15 basically signing away my rights to the 33 and a third
16 that I was promised, and I'm not sure that that's okay,
17 and so I'm not just going to stick my signature on it.

18 And Dietz said -- well, in an email, I think we
19 had -- we had a second -- we scheduled a second phone
20 conversation and Dietz was non-committal, but he said,
21 I'll have somebody, you know, our legal department get
22 in touch with you and explain why this is okay, that
23 we're -- and, in fact, we're now offering you -- excuse
24 me -- this is actually better than okay, because we're
25 actually in this custom agreement offering you more than

1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES)

3 I, ROSEMARY LOCKLEAR, a Certified Shorthand
4 Reporter of the State of California, duly authorized to
5 administer oaths pursuant to Section 2025 of the
6 California Code of Civil Procedure, do hereby certify
7 that

8 LUIGI WARREN, Ph.D., the witness in the
9 foregoing deposition, was by me duly sworn to testify
10 the truth, the whole truth and nothing but the truth in
11 the within-entitled cause; that said testimony of said
12 witness was reported by me, a disinterested person, and
13 was thereafter transcribed under my direction into
14 typewriting and is a true and correct transcription of
15 said proceedings.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named, nor in any
19 way interested in the outcome of the cause named in
20 said deposition dated the _____ day of
21 _____, 2018.

22

23

24

25 ROSEMARY LOCKLEAR, RPR, CRR, CSR 13969